

CHAPTER 56: STORMWATER ILLICIT DISCHARGE AND CONNECTION

SECTION

GENERAL PROVISIONS

- 56.01 Purpose
- 56.02 Authority
- 56.03 Applicability
- 56.04 Responsibility for Administration
- 56.05 Ultimate Responsibility
- 56.06 Compatibility with other permit and chapter requirements
- 56.07 Severability
- 56.08 Definitions
- 56.09 Discharge Prohibitions
- 56.10 Suspension of MS4 Access
- 56.11 Industrial or Construction Activity Discharges
- 56.12 Monitoring of Discharges
- 56.13 Requirement to Prevent, Control, and Reduce Stormwater Pollutants by the use of Best Management Practices
- 56.14 Proper Credential or Identification Required
- 56.15 Watercourse Protection
- 56.16 Notification of Spills
- 56.17 Enforcement
- 56.18 Appeal of Notice of Violation
- 56.19 Enforcement Measures after Appeal
- 56.20 Cost of Abatement of the Violation
- 56.21 Injunctive Relief
- 56.22 Compensatory Action
- 56.23 Violations Deemed a Public Nuisance
- 56.24 Judicial Enforcement Remedies
- 56.25 Remedies Not Exclusive

56.01 PURPOSE

The purpose of this Chapter is to provide for the health, safety, and general welfare of the citizens of the City of Richmond through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This Chapter establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this Chapter are:

- (a) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user;
- (b) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system;
- (c) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Chapter.

56.02 AUTHORITY

This Chapter is adopted under the authority granted by Indiana Code 36-1-4-11, 36-7-4, and all acts supplemental and amendatory thereto. This authority provides for the administration, enforcement, and amendment of this Chapter for controlling stormwater illicit discharges and connections in the City of Richmond.

56.03 APPLICABILITY

This Chapter shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the City of Richmond.

56.04 RESPONSIBILITY FOR ADMINISTRATION

The City of Richmond shall administer, implement, and enforce the provisions of this Chapter by and through the Richmond Sanitary District. Any powers granted or duties imposed upon the City of Richmond may be delegated in writing by the City of Richmond to persons or entities acting in the beneficial interest of or in the employ of the agency.

56.05 ULTIMATE RESPONSIBILITY

The standards set forth herein and promulgated pursuant to this Chapter are minimum standards; therefore this Chapter does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

56.06 COMPATIBILITY WITH OTHER PERMIT AND CHAPTER REQUIREMENTS

This Chapter is not intended to interfere with, abrogate, or annul any other Chapter, rule or regulation, statute, or other provision of law. The requirements of this Chapter should be considered minimum requirements, and where any provision of this Chapter imposes restrictions different from those imposed by any other Chapter, rule or regulation, or other provision of law, whichever

provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

56.07 SEVERABILITY

The invalidity of any section, clause, sentence, or provision of this Chapter shall not affect the validity of any other part of this Chapter which can be given effect without the invalid part or parts. (Ord. 54-1981)

56.08 DEFINITIONS

For the purposes of this Chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- (a) “BEST MANAGEMENT PRACTICES (BMPS)” -- Schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.
- (b) “CITY” – The City of Richmond, or designated party.
- (c) “CLEAN WATER ACT” -- The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.
- (d) “CONSTRUCTION ACTIVITY” -- Activities subject to NPDES Construction Permits. NPDES Stormwater Phase II permits are required for construction projects resulting in land disturbance of 1 acre or more. Such activities include, but are not limited to, clearing and grubbing, grading, excavating, and demolition.
- (e) “HAZARDOUS MATERIALS” -- Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
- (f) “ILLEGAL DISCHARGE” -- Any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in Section 56.09 A.1 of this Chapter.

(g) "ILLICIT CONNECTIONS" -- An illicit connection is defined as either of the following:

(1) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system;

(2) Any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by the City; or

(3) Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps or equivalent records and approved by the City.

(h) "IMPERVIOUS SURFACE" -- Those surfaces that cannot effectively infiltrate rainfall (e.g., building rooftops, pavement, sidewalks, driveways, etc).

(i) "INDUSTRIAL ACTIVITY" -- Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

(j) "MS4" -- Municipal Separate Storm Sewer System

(k) "NPDES PERMIT" -- National Pollution Discharge Elimination System Permit. A permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to water of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

(l) "NON-STORMWATER DISCHARGE" -- Any discharge to the storm drain system that is not composed entirely of stormwater.

(m) "PERSON" -- Any individual, partnership, co-partnership, firm, company, corporation, association, trust, estate, political subdivision, state agency, or any other legal entity or their legal representative, agent or assigns legally capable of owning property in the state. (Ord. 54-1981)

(n) "POLLUTANT" -- A pollutant is something that causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-

hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, and accumulations so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing or building or structure; sediments and noxious or offensive matter of any kind.

- (o) "PREMISES" -- Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- (p) "STORM DRAINAGE SYSTEM" -- Publicly-owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.
- (q) "STORMWATER" -- Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
- (r) "STORMWATER POLLUTION PREVENTION PLAN" -- A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, or receiving waters to the maximum extent possible.
- (s) "WASTEWATER" -- Any water or other liquid, other than uncontaminated stormwater discharged from a dwelling, commercial building, industrial facility or institution.
- (t) "WATERCOURSE" -- A natural or artificial channel for the passage of water either continuously or intermittently. (Ord. 93-2002)

56.09 DISCHARGE PROHIBITIONS

- (a) Prohibition of Illegal Discharges.

No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or

contribute to a violation of applicable water quality standards, other than stormwater.

The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

(1) The following discharges are exempt from discharge prohibitions established by this Chapter: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), water from crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated - less than one PPM chlorine), fire fighting activities, and any other water source not containing pollutants.

(2) Discharges specified in writing by the City as being necessary to protect public health and safety.

(3) Dye testing is an allowable discharge, but requires a verbal notification to the Richmond Sanitary District prior to the time of the test.

(4) The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

(b) Prohibition of Illicit Connections.

(1) The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.

(2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(3) A person is considered to be in violation of this Chapter if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

56.10 SUSPENSION OF MS4 ACCESS

(a) Suspension due to Illicit Discharges in Emergency Situations

The City may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the City may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

(b) Suspension due to the Detection of Illicit Discharge

Any person discharging to the MS4 in violation of this Chapter may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The City will notify a violator of the proposed termination of its MS4 access. The violator may petition the City for a reconsideration and hearing.

(c) A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the City.

56.11 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City prior to the allowing of discharges to the MS4.

56.12 MONITORING OF DISCHARGES

(a) Access to Facilities.

(1) The City shall be permitted to enter and inspect facilities subject to regulation under this Chapter as often as may be necessary to determine compliance with this Chapter. If a facility operator has security measures in force which require proper identification and clearance before entry into its premises, the facility operator shall make the necessary arrangements to allow access to representatives of the City.

(2) Facility operators shall allow the City ready access to all parts of the premises for the purposes of inspection, sampling, examination

and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.

(3) The City shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the City to conduct monitoring and/or sampling of the facility's stormwater discharge.

(4) The City has the right to require the facility operator to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be installed and maintained by the facility operator's own expense. The facility operator shall maintain the monitoring equipment at all times in a safe and proper operating condition. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

(5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the facility operator at the written or oral request of the City and shall not be replaced. The costs of clearing such access shall be borne by the facility operator.

(6) Unreasonable delays, as determined by the Richmond Sanitary District, in allowing the City access to a permitted facility is a violation of a stormwater discharge permit and of this Chapter. A facility operator with a NPDES permit to discharge stormwater associated with industrial activity commits an offense if the facility operator denies the City reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this Chapter.

(7) If the City has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Chapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the City may seek issuance of a search warrant from any court of competent jurisdiction.

56.13 REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORMWATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES

The City will adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. By way of example these establishments include, but are not limited to: impervious surfaces; retail gasoline outlets; or municipal, state, federal or institutional refueling areas. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a Stormwater Pollution Prevention Plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

56.14 PROPER CREDENTIAL OR IDENTIFICATION REQUIRED

The City shall present proper credentials or identification before entering upon property of the person.

56.15 WATERCOURSE PROTECTION

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. If herbicides are used for vegetation control, that herbicide shall be compatible with and registered for use in and around watercourses. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

56.16 NOTIFICATION OF SPILLS

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into

stormwater, the storm drain system, or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the City in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years from date of record, unless an investigation or litigation exists or is pending, in which case, records shall be retained indefinitely.

56.17 ENFORCEMENT

(a) Notice of Violation.

Whenever the City finds that a person has violated a prohibition or failed to meet a requirement of this Chapter, the City may order compliance by written Notice of Violation to the responsible person. Such notice may require without limitation:

- (1) The performance of monitoring, analysis, and reporting;
- (2) The elimination of illicit connections or discharges;
- (3) That violating discharges, practices, or operations shall cease and desist;
- (4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; and
- (5) Payment of a fine to cover administrative and remediation costs; and
- (6) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

(b) Administrative Fines.

(1) When the City finds that a person has violated, or continues to violate, any provision of this Chapter, the City may impose an administrative fine against such person in an amount not to exceed \$2,500.00 on a per violation, per day basis, plus any administrative or remediation costs.

(2) Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the person.

56.18 APPEAL OF NOTICE OF VIOLATION

Any person receiving a Notice of Violation may appeal the determination of the City. The notice of appeal must be received within ten (10) days from the date of the Notice of Violation. Hearing on the appeal before the appropriate authority or his/her designee shall take place within fifteen (15) days from the date of receipt of the notice of appeal, unless waived by both the City and the person appealing. The decision of the municipal authority or their designee shall be final.

56.19 ENFORCEMENT MEASURES AFTER APPEAL

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within ten (10) days of the decision of the municipal authority upholding the decision of the City, then representatives of the City shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above. Penalties shall include but are not necessarily limited to those found in Section 56.24 of this chapter.

56.20 COST OF ABATEMENT OF THE VIOLATION

Within thirty (30) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within ten (10) days of the post marked notice informing the property owner of the cost of abatement. If the amount due is not paid within sixty (60) days of the post marked date on the notice, or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

Any person violating any of the provisions of this article shall become liable to the City by reason of such violation. The liability shall be paid in not more than 12

equal payments. Interest at the rate as established by Indiana Law, which interest rate is currently eight percent (8%) per annum, shall be assessed on the balance beginning on the tenth (10th) day following the post marked date of the notice of cost of abatement.

56.21 INJUNCTIVE RELIEF

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Chapter. If a person has violated or continues to violate the provisions of this Chapter, the City may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

56.22 COMPENSATORY ACTION

In lieu of enforcement proceedings, penalties, and remedies authorized by this Chapter, the City may impose upon violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, or such other activities selected by the City.

56.23 VIOLATIONS DEEMED A PUBLIC NUISANCE

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Chapter is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

56.24 JUDICIAL ENFORCEMENT REMEDIES

(a) Injunctive Relief

When the City finds that a person has violated, or continues to violate, any provision of this Chapter, an NPDES permit, or order issued hereunder, or any other standard or requirement, the City may petition through any court of general jurisdiction within Wayne County, for the issuance of a temporary or permanent injunction. The City may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the person to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a person.

(b) Civil Penalties

In addition to the administrative fines available herein, a person who has violated, or continues to violate, any provision of this Chapter, or order issued hereunder, or any other standard or requirement shall also be liable to the City for a maximum civil penalty of \$2,500.00 per violation, per day. Penalties shall accrue for each day during the period of the violation.

(c) The City may recover reasonable attorney's fees, court costs, and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the District.

(d) In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the person's violation, corrective actions by the person, the compliance history of the person, and any other factor as may be deemed appropriate.

(e) Filing a suit for civil penalties shall not be a bar against, or a prerequisite, for taking any other action against a person.

56.25 REMEDIES NOT EXCLUSIVE

The remedies listed in this Chapter are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the City to seek cumulative remedies. **Ord. 72-2004**